

REMARKS

The Office Action mailed September 14, 2005, has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. The amendments made herein are fully supported by the Application as originally filed. No new matter has been added. Accordingly, reconsideration of the present Application in view of the above amendments and following remarks is respectfully requested.

CLAIM STATUS

Claims 1-28 are pending in this Application. By this Amendment, Applicants have amended claims 1 and 16. Claims 2, 3, 10, 11, 21-24 have been cancelled. The claims under consideration are, therefore, believed to include claims 1, 4-9, 12-20 and 25-28.

Claim Objections

Claim 16 stands objected to under 37 CFR § 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. By this Amendment, Applicants have amended claim 16 to recite a flame retardant thermoset article comprising a flame retardant composition as claimed in claim 1. Consequently, it is believed this claim is now in proper dependent form and such objection should be removed.

Claim Rejections Under 35 USC § 112, Second Paragraph

Claim 21 stands rejected under 35 USC § 112, second paragraph, as being indefinite. Claim 21 has been cancelled.

Claim 1-15 and 21-26 stand rejected as being incomplete for omitting essential elements. The Office states that the omission amounts to a gap between

the elements and states that the omitted elements have thermosetting polymers. By this Amendment, claim 1 has been amended to recite the requirement of at least one thermosetting resin. In consequence, it is respectfully contended that the rejections under 35 USC § 112, second paragraph, have been overcome.

Claim Rejections Under 35 USC § 102

Claims 1-28 stand rejected under 35 USC § 102(b or e) as being anticipated by Byrd et al. 4,308,197; Horold 6,420,459 or Heinen et al. 6,646,030. This rejection is respectfully overcome.

Independent claim 1 now recites a flame retardant thermoset composition comprising at least one thermosetting resin and a flame retardant having a salt or a polymer of formula (I) or (II) wherein R<sub>1</sub> and R<sub>2</sub> are methyl, ethyl, n-propyl, isopropyl, n-butyl, tert-butyl, n-pentyl or phenyl. Applicants wish the Office to take notice that in the definition of M reference to a protonated nitrogen base has been deleted, while with respect to component B, such compound is now selected from the group consisting of red phosphorus, zinc oxide, zinc stannate, zinc hydroxystannate, zinc phosphate, zinc borate and zinc sulfide.

With respect to Byrd, Byrd does not describe, teach or suggest a composition comprising the component of formula (I) or (II) as recited in combination with red phosphorus or the selected zinc compounds.

Turning to Heinen, the reference does not teach, disclose, or suggest a thermoset composition having red phosphorus or the selected zinc compounds.

Again, with Horold, such reference does not teach, disclose, or suggest the red phosphorus or selected zinc compounds according to amended claim 1.

In view of the fact that a § 102 rejection requires each prior art reference to disclose every element of a claimed invention, it is respectfully contended that the amendment to independent claim 1 overcomes the § 102 rejection over Byrd, Heinen or Horold.

Claim Rejections Under 35 USC § 103

Claims 1-28 stand rejected under 35 USC § 103(a) as being unpatentable over Byrd et al. 4,308,197; Horold 6,420,459 or Heinen et al. 6,546,030. This rejection is respectfully overcome.

The Office position is stated as follows: "It would have been obvious to one having ordinary skill in the art at the time the invention was made, to select applicants' claimed ingredients from a list of equivalents." Applicants respectfully can not agree.

A *prima facie* case of obviousness requires the prior art to provide some motivation or incentive to alter the references of record to arrive at the instantly claimed invention. Here none of the three cited references teach, disclose or claim a compound B selected from the group of red phosphorus, zinc oxide, zinc stannate, zinc hydroxystannate, zinc phosphate, zinc borate and zinc sulfide. In view of the fact these references do not provide the motivation necessary to combine the phosphinic compound of formula (I) or (II) with the amended component B, there can be no motivation derived from such references to arrive at the instantly claimed invention. Subsequently, any attempt by the Office to assert obviousness against the presently claimed invention is, courteously stated, the product of impermissible hindsight gained by a knowledge of Applicants' invention.

For at least this reason, Applicants respectfully contend that claim 1 and all claims depending there from are not made obvious by Byrd, Horold or Heinen alone or in combination. In consequence, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection.

In view of the forgoing amendments and remarks, the present Application is believed to be in condition for allowance, and reconsideration of it is requested. If the Examiner disagrees, he is requested to contact the attorney for Applicants at the telephone number provided below.

Respectfully submitted,



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